

### 3.10 UNLAWFUL HARASSMENT COMPLAINTS

(2.2 Human Relations Personnel Policies & Procedures)

It is the policy of the City of Long Beach to actively promote employment opportunities to all persons on all matters affecting City employment. The City of Long Beach reaffirms that no person shall be harassed on the basis of race, religion, color, national origin, ancestry, physical or mental disability, medical condition, marital status, age, sex, sexual orientation, or on any other basis inconsistent with federal or state statutes, the City Charter, or City ordinances, resolutions, rules, or regulations.

**Unlawful Harassment** - Harassment that creates a hostile, intimidating, or offensive work environment, and occurs because of an employee's protected status (i.e. race, religion, national origin, ancestry, physical or mental disability, medical condition, marital status, age, sex, or sexual orientation), is unlawful.

**Sexual Harassment** - Sexual harassment is a form of sex discrimination. It is conduct of a sexual nature that is unwelcome, not asked for, and not returned.

Sexual harassment may consist of any form or combination of verbal, non-verbal, visual, or physical conduct. It need not be explicit, nor even specifically directed at an individual. Such behavior includes, but is not limited to: Sexually offensive comments, offers, slurs, innuendoes, leering, ogling, posters, cartoons, or drawings; physical contact such as touching, pinching, or brushing against another's body; or demands for sexual favors.

Unwelcome sexual conduct which is sufficiently severe and pervasive as to create a hostile, intimidating, or offensive work environment, or when an employment decision is based on whether an employee submitted or refused to submit to some form of sexual conduct, is considered harassment.

The following are three criteria that shall be utilized as guidelines for determining whether or not certain conduct constitutes unlawful sexual harassment:

- Submission to the conduct is made either as an explicit or implicit condition of employment; or,
- Submission to or rejection of such conduct is the basis for employment decisions affecting an individual, such as, continued employment or decisions affecting pay, benefits, and/or advancement opportunities, or other terms and conditions of employment; or,
- Such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment

**Retaliation** - Retaliation against an individual for having initiated a complaint of harassment or discrimination is considered unlawful harassment. To discipline, transfer, shun, or deny a promotional opportunity, training, or assignment to an employee, after he/she has filed a complaint, may be viewed as retaliation.

### 3.10.1 Complaint Resolution Process

The following procedures are intended to facilitate the timely resolution of complaints of unlawful harassment. They are designed to administratively resolve complaints in a timely manner, ensure that appropriate action is taken, and minimize the financial impact upon both the complainant and the City.

A City employee, job applicant, or third party, such as a member of the public, has several administrative processes available to him/her for resolution of a complaint. An individual may present a complaint either to an appropriate supervisor/manager, a designee, or the City's Equal Employment Opportunity Office.

Each Department head designates an Equal Opportunity Counselor who acts as liaison between management and the Department's employees. The Administrator of the Personnel Division is the Police Department's Counselor. The counselor serves as the Department's primary contact person on equal employment opportunity issues, and assists employees in the resolution of problems and concerns related to equal employment opportunity matters.

Upon request, employees shall be permitted to use scheduled work hours in order to meet with their Equal Opportunity Counselor, appropriate supervisor/manager, or the City's Equal Employment Opportunity Office. No employee shall fear reprisal or retaliation because of reporting an alleged act of harassment.

It is important that complainants be apprised of their rights to file a complaint with an external regulatory agency. They should, however, be encouraged to first utilize the City's internal procedure to seek resolution.

### 3.10.2 Procedures

Any employee, who believes he/she has experienced any type of unlawful harassment, should immediately notify the appropriate supervisor/manager, Department Equal Employment Counselor, or the City's Equal Employment Opportunity Office.

#### Departmental Investigation

- Upon being made aware that an issue exists regarding harassment, the Department shall immediately contact the City's Equal Employment Opportunity Office for direction, **prior** to proceeding with any investigation, and before taking **ANY** action. This will help verify that the policy is being correctly interpreted and the procedures are properly followed. It will also provide uniformity in the City's response to allegations regarding unlawful harassment and ensure that immediate and appropriate action is taken
- In the event a complaint is filed with the Equal Employment Opportunity Commission (EEOC) or the Department of Fair Employment and Housing (DFEH), by following

this procedure, the Equal Employment Opportunity Office will be fully informed and in agreement with all prior action taken

- With the concurrence of the Equal Employment Opportunity Office, the Department shall proceed with an investigation

During this entire process, it is critical that, to the extent possible, strict confidentiality be maintained. Any individual contacted during an investigation is to be instructed to maintain confidentiality regarding all matters related to the complaint. All records pertaining to the complaint are strictly confidential and are to be maintained apart from any personnel file

As part of the investigation, the complainant must advise the Department what he/she would consider a resolution of the complaint

- Upon completion of an investigation and prior to drawing any conclusion, the Department shall again contact the Equal Employment Opportunity Office. In cooperation with the Equal Employment Opportunity Office, the course of action will be determined, including any corrective action, if appropriate
- Upon completion of the corrective action, the Department shall notify the complainant, complete records, then report the action taken to the Equal Employment Opportunity Office

### **3.10.3 Equal Employment Office Investigation**

The Equal Employment Opportunity Office acts as a neutral third party in a complaint, and is responsible for investigating, examining the facts, and determining whether unlawful harassment did occur. The role of the Equal Employment Opportunity Office is not to serve as an advocate of either the City or the complainant, but to determine the truth of the matter and protect the City against needless liability.

- An employee or job applicant always has the option of filing a complaint directly with the City's Equal Employment Opportunity Office
- An employee shall be allowed to use scheduled work hours for meeting with the Equal Employment Opportunity Officer/designee
- The Equal Employment Opportunity Office shall contact and advise the Department head that an employee/applicant has filed an unlawful harassment complaint. Then, following discussion with the Department, the Equal Employment Opportunity Office will decide whether the Department or the Equal Employment Opportunity Office will proceed with an investigation. The Department head will be notified of the course of action
- In order to seek resolution, any person(s) having knowledge of the incident(s) may be contacted directly by the Equal Employment Opportunity Office/designee. When this occurs, and when it is appropriate, the Equal Employment Opportunity Office will notify the appropriate Department Manager of the contact and the information received from the employee(s)

Because an investigation may ultimately be conducted by an outside regulatory agency, it is imperative that the Equal Employment Opportunity Office receive all comments uncensored and as stated by the employee(s). Under no circumstances will information be altered or withheld. This could impede the City's ability to properly respond to the charges and ultimately result in additional liability to the City.

- Upon completion of the investigation, the Equal Employment Opportunity Office shall contact and advise the Department of the results and the appropriate corrective action that will be recommended to the City Manager/designee
- Following the completion of any corrective action, the Department is to advise the Equal Employment Opportunity Office of the action taken. The Equal Employment Opportunity Office shall then inform the complainant of the resolution and closure of the complaint. The complainant shall also be advised of his/her right to file a complaint with an external regulatory agency

### **Outside Regulatory Agencies**

An individual may elect to file a complaint with an outside regulatory agency. The state agency is the Department of Fair Employment and Housing (DFEH) and the federal agency is the Equal Employment Opportunity Commission (EEOC).

- The City's Equal Employment Opportunity Office is responsible for handling and responding to all complaints filed with outside regulatory agencies. Should the Department receive a complaint, it is to be immediately forwarded to the Equal Employment Opportunity Office
- Once a complaint is received from an outside agency, communication with the individual/ complainant ceases and all further communication takes place between the Equal Employment Opportunity Office and the regulatory agency. It then becomes the responsibility of the Equal Employment Opportunity Office, on behalf of the City, to prepare a response to the complaint
- Upon receipt of a complaint, the Equal Employment Opportunity Office shall provide the Department head with a copy of the complaint. The Department then assigns an individual to respond to the allegations contained in the complaint, provides any additional information that might assist in preparing the City's response, and returns it to the Equal Employment Opportunity Office within the time specified
- Upon receipt of the Department's response, the Equal Employment Opportunity Office prepares the City's response to the regulatory agency. As with internal investigations, this often requires that individuals, who may be able to provide additional information or clarification, will be contacted directly, following notification of appropriate Department management
- Once the City's response is completed, it is forwarded to the City Attorney's Office for review. When concurrence is obtained, the response is forwarded to the appropriate agency and a copy of the City's response is forwarded to the Department

- Prior to the resolution of a complaint, agencies often contact the Equal Employment Opportunity Office and request additional information and/or meetings with specific individuals. This will be coordinated through the Equal Employment Opportunity Office. There should not be any contact between the Department and an agency, without the prior knowledge of the Equal Employment Opportunity Office and the approval of the City Attorney's Office. Should an agency, attorney, or union representing a complainant contact the Department or individual, they are to be referred to the Equal Employment Opportunity Office.